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# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

Preston Bryant  
Secretary of Natural Resources

**West Central Regional Office**  
3019 Peters Creek Road, Roanoke, Virginia 24019  
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David K. Paylor  
Director

Steven A. Dietrich  
Regional Director

### COMMONWEALTH OF VIRGINIA WASTE MANAGEMENT BOARD CONSENT ORDER

**ISSUED TO  
THE SOUTHERN FINISHING COMPANY, INCORPORATED  
VAD023801210**

#### **Section A: Purpose**

This is a consent order issued under the authority of §§ 10.1-1182 *et seq.* and §§ 10.1-1402, 10.1-1405, and 10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to The Southern Finishing Company, Incorporated to resolve certain alleged violations of environmental laws and/or regulations at The Southern Finishing Company, Incorporated facility in Martinsville, Virginia.

#### **Section B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "SF" means The Southern Finishing Company, Incorporated, a North Carolina corporation, which operates a plant for manufacturing and finishing decorative wooden molding and cabinet panels at 801 Church Street in Martinsville, Virginia.

6. "Order" means this document, also known as a consent order.
7. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("HWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
8. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.*
9. "Regional Office" means the West Central Regional Office of the Virginia Department of Environmental Quality, which is located at 3019 Peters Creek Road, Roanoke, Virginia 24019.

**Section C: Findings of Fact and Conclusions of Law**

1. On November 19, 2002, SF registered its plant in Martinsville, Virginia with the U.S. Environmental Protection Agency and the Department as a small quantity generator of hazardous waste. The EPA hazardous waste generator ID number VAD023801210 was first assigned to the Martinsville plant (at that time under different ownership) on September 2, 1980.
2. On April 27 and May 3, 2004, Department staff conducted a hazardous waste compliance evaluation inspection at the SF plant in Martinsville, Virginia. In a Notice of Violation ("NOV") issued to SF on May 19, 2004, the Department cited violations of the Regulations that were documented by the inspection.
3. A Recovery Log provided to the Department by SF for solvent recycling at the Martinsville SF plant indicates that 14.5 55-gallon drums of D001/F003/F005 hazardous waste solvent were processed on January 8, 2004 and 21 55-gallon drums of D001/F003/F005 hazardous waste solvent were processed on January 22, 2004, for a total of 35.5 55-gallon drums processed in January 2004. The Recovery Log provided by SF for February 2004 indicates that 18.25 55-gallon drums of D001/F003/F005 hazardous waste spent solvent were processed on February 10, 2004. Assuming a density of 7.0 pounds per gallon, 13,668 pounds of D001/F003/F005 hazardous waste solvent was processed at the Martinsville SF plant in January 2004 and 6,256 pounds of D001/F003/F005 hazardous waste solvent was processed at the Martinsville SF plant in February 2004.
4. Criteria for hazardous waste generator status are specified at 40 CFR 262.34. A facility that generates more than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of hazardous waste in a calendar month is classified as a small quantity generator, provided that the total quantity of hazardous waste accumulated is less than 6,000 kilograms

(13,200 pounds). A facility that generates 1,000 kilograms (2,200 pounds) or more of hazardous waste in a calendar month is a large quantity generator. Under 40 CFR 261.5(c)(3), spent solvents that are continuously recycled on-site do not have to be counted toward the monthly total that is used to determine generator status. When spent solvents are accumulated in containers between recycling events, the stored wastes must be included in the generator status monthly total.

5. Accordingly, by generating at least 13,668 pounds of D001/F003/F005 hazardous waste solvent in January 2004 and at least 7,026 pounds of D001/F003/F005 hazardous waste solvent in February 2004, SF exceeded the monthly generation rate ceiling of 2,200 pounds for eligibility as a small quantity generator and was at that point regulated as a large quantity generator.
6. At the time of the April 27 and May 3, 2004 inspections, SF had accumulated twenty-three drums of D001/F003/F005 hazardous waste spent solvent (backing stain or catalyst) and two 55-gallon drums of D001/F003/F005 hazardous waste (paint waste) in the designated hazardous waste storage area. SF representatives stated that the spent solvent was being stored pending recycling. Only one of the twenty-three spent solvent drums was labeled as a hazardous waste. Because twenty-two of the spent solvent drums were not labeled as hazardous waste as required by 40 CFR 262.34(a)(3) and did not have accumulation start dates marked as required by 40 CFR 262.34(a)(2), SF did not comply with the requirements for recyclable materials at 40 CFR 261.6 for the unlabeled spent solvent drums.
7. DEQ inspectors observed twenty-three 55-gallon drums and sixteen 5-gallon pails of unused waste stains and paint products from "Vanguard"<sup>1</sup>, 146 55-gallon drums and 251 5-gallon pails of off-specification or discontinued products, and twenty-four 55-gallon drums of D001/F003 hazardous waste still bottoms stacked inside a room formerly used as a lumber-drying kiln ("kiln room"). In violation of storage requirements at 40 CFR 264.34(a), these drums and pails were stacked three pallets high without adequate aisle space in the kiln room. Label information indicates that at least thirteen of the D001/F003 hazardous waste still bottoms drums had been stored for more than 90 days contrary to large quantity generator storage criteria specified at 40 CFR 262.34(a) and (b). SF had not made hazardous waste determinations for most of the other containers in the kiln room as required by 40 CFR 262.11. In violation of the requirements of 40 CFR 264.34(a), many of the containers were not labeled and did not have accumulation start dates. SF records indicate that most of the unlabeled containers consisted of off-specification materials left by Pulaski Furniture, the former owner of the plant or hazardous air pollutants ("HAPS") paint materials that SF was prohibited from using in its spray operations after June 2003 by a Consent Order regarding air pollution issues.

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<sup>1</sup> "Vanguard" is the manufacturer of these products.

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8. Because the HAPS paint materials were unusable by SF after June 2003, those materials were subject at that point to regulation as hazardous waste. SF did not provide documentation under 40 CFR 261.2(f) that these materials were usable product.
9. In an e-mail dated March 30, 2004, a consultant for SF reported to SF the following inventory at SF: "Old Inventory from Legget Plant – 42 Barrel, 29 Buckets; Ink Related – 16 Buckets; Waste and Still Bottoms – 48 Drums; Glue – 4 Drums; Old Finishing Materials – 63 drums, 139 Buckets."
10. In an "Inventory Count" dated April 29, 2004, SF reported the following inventory: "Vanguard (old paint related products) – 23 55-gallon drums and 16 5-gallon buckets; Unused Product – 146 55-gallon drums and 251 5-gallon buckets; Still Bottoms – 24 55-gallon drums ; Old Glue – 198 55-gallon drums and 267 5-gallon buckets."
11. A spreadsheet summarizing hazardous waste shipments by SF in 2004 that was submitted to DEQ on April 30, 2007 documents the disposal by SF of 191 drums totaling 50,712 pounds of "unused paint stains & thinners" and 31 drums totaling 10,943 pounds of "paint still bottoms" in June 2004.
12. In a written hazardous waste summary submitted to DEQ during a meeting on March 5, 2007, SF stated that twenty-six drums of still bottoms with a total weight of 14,014 pounds were accumulated over the period between April 2002 and May 2004.
13. As summarized in the preceding paragraphs, the number of drums and buckets containing waste observed during of the April and May 2004 DEQ inspections, considered in combination with the number of drums and buckets documented in inventories prepared by SF in April and May 2004, and the total quantity of waste disposed of by SF in June 2004, indicate that as of the date of the April 2004 inspection, SF had exceeded the 6,000 kilogram (13,200 pound) hazardous waste storage limit for small quantity generators.<sup>2</sup>
14. In a letter dated May 18, 2004, SF notified DEQ that its generator status should be changed to Large Quantity Generator.
15. Inspection results showed that in violation of the requirements of 40 CFR 262.11, SF had not made hazardous waste determinations on several waste streams, including off-specification commercial chemical products and discontinued products (both stored in the kiln room) and used paint booth filters.

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<sup>2</sup> Information from preceding paragraphs referenced includes: Paragraph 6 – 25 drums in hazardous waste storage area; Paragraph 7 – 173 drums and 267 buckets in the kiln area; Paragraph 8 – 153 drums and 168 buckets listed in March inventory; Paragraph 9 – 193 drums and 267 buckets listed in April inventory; Paragraph 10 – SF spreadsheet documenting 50,712 pounds of "unused paint stains & thinners" and 10,014 pounds of still bottoms.

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16. Inspection results showed that SF did not comply with container storage, management, and training requirements at 40 CFR 264 applicable to large quantity generators. Moreover, because at least thirteen 55-gallon drums of hazardous waste were stored on-site for more than 90 days, SF violated Va. Code § 10.1-1426.A and RCRA permit and operations requirements at 40 CFR 262.34, 40 CFR 264, and 40 CFR 270.
17. In a letter dated August 2, 2004, SF provided a corrective action schedule for the violations alleged in the NOV.
18. On August 29, 2005, Department staff performed a compliance evaluation inspection at the SF plant in Martinsville, Virginia. Violations cited as a result of the inspection include: a) Failure to characterize the paint booth filter waste stream (40 CFR 262.110); b) Failure to maintain terminated manifests on site (40 CFR 262.40 & 262.42); c) Failure to perform weekly inspections in 90-day accumulation areas (40 CFR 264/265.174); d) Failure to train employees in waste handling and emergency procedures (40 CFR 262.34(a)(3)); e) Failure to maintain job titles and descriptions for training (40 CFR 265.26(d)); f) Failure to develop universal waste program (40 CFR 273); and g) Failure to document Subpart CC operating procedures (40 CFR 264.1080).
19. The Department issued a NOV for the violations identified in the August 29, 2005 inspection on September 23, 2005.
20. In a letter dated October 26, 2005, and in subsequent sampling and analysis report, a consultant for SF submitted information documenting the correction of the violations identified in the August 29, 2005 inspection.
21. On September 7, 2006, Department staff performed a compliance evaluation inspection at the SF plant in Martinsville, Virginia. Violations cited as a result of the inspection include: a) Failure to maintain a written job description for training (40 CFR 264/265.16(d)(2)); b) Failure to keep universal waste containers closed (40 CFR 273.13(d)(1) and 273.33(d)(1) and 9 VAC 20-60-273.B.3); c) Failure to properly label universal waste containers (40 CFR 273.14(e) and 273.34(e)).
22. In a letter dated September 11, 2006, SF submitted documentation of correction of the violations identified during the September 7, 2006 inspection.
23. The Department issued a NOV for the violations identified in the September 7, 2006 inspection on September 22, 2006.

**Section D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it pursuant to Code § 10.1-1455, orders SF and SF voluntarily agrees to pay a civil charge of \$146,000.00 in settlement of the violations cited in

this Order. SF shall pay \$25,000.00 of this civil charge not later than thirty (30) days after the effective date of this Order. Payment of the remaining \$121,000.00 of this civil charge shall be made in twenty installments of \$6,050.00 each, due on the following schedule:

Installment Number	Amount Due	Due Date
1	\$6,050.00	January 15, 2008
2	\$6,050.00	February 15, 2008
3	\$6,050.00	March 15, 2008
4	\$6,050.00	April 15, 2008
5	\$6,050.00	May 15, 2008
6	\$6,050.00	June 15, 2008
7	\$6,050.00	July 15, 2008
8	\$6,050.00	August 15, 2008
9	\$6,050.00	September 15, 2008
10	\$6,050.00	October 15, 2008
11	\$6,050.00	November 15, 2008
12	\$6,050.00	December 15, 2008
13	\$6,050.00	January 15, 2009
14	\$6,050.00	February 15, 2009
15	\$6,050.00	March 15, 2009
16	\$6,050.00	April 15, 2009
17	\$6,050.00	May 15, 2009
18	\$6,050.00	June 15, 2009
19	\$6,050.00	July 15, 2009
20	\$6,050.00	August 15, 2009

Each payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, VA 23218

Each payment shall include SF's Federal Identification Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

**Section E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of SF, for good cause

shown by SF, or on its own motion after notice and opportunity to be heard.

2. This Order addresses only those violations pertaining to the facility specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, SF admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. SF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SF declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code § 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
6. Failure by SF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. SF must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. SF shall notify the Director and the Regional Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

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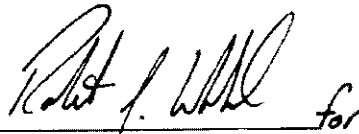
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- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Regional Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SF. Notwithstanding the foregoing, SF agrees to be bound by any compliance date that precedes the effective date of this Order.
11. This Order shall continue in effect until either: a) SF petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order, or b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to SF. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By the signature of an authorized official below, SF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 27 December, 2007.

A handwritten signature in black ink, appearing to read "Robert J. White", followed by the word "for" in a smaller, cursive script.

Steven A. Dietrich, Regional Director  
West Central Regional Office  
Department of Environmental Quality



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Seen and Agreed to:

Ed Brown, President  
The Southern Finishing Company, Incorporated

The foregoing instrument was acknowledged before me on 11-12-07

by Ed Brown, President, on behalf of The Southern Finishing  
(name) (title)  
Company, Incorporated, in the County/City of Stoneville, State of NC.

Janet Mannin  
Notary Public

My Commission expires: 10-18-08